MRSA MILTON REGIONAL SEWER AUTHORITY

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OFFICE OF THE
EXECUTIVE SECRETARIAT

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Water Docket, Mailcode: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Chesapeake Bay TMDL- Docket no. EPA-R03-OW-2010-0736

Dear Administrator Jackson:

Enclosed you will find a hard copy of the Milton Regional Sewer Authority's public comments on the proposed draft Chesapeake Bay TMDL. This submittal of a hardcopy is in addition to the electronic submission of these same comments which was made on November 8, 2010 prior to the submittal deadline.

Thank you for your consideration of our comments on this important matter.

Sincerely,

George Myers, Superintendent
Milton Regional Sewer Authority
eMail: gmyers@miltonregional.org

Enclosures

The Milton Regional Authority supports the clean up of the Chesapeake Bay and all impaired waters. We appreciate the opportunity to provide comments on the draft TMDL dated September 24, 2010.

Based on the following comments and questions, the Authority believes that it is not appropriate to implement the draft TMDL without considerably more public participation and information sharing. Further, we believe that the TMDL should be re-drafted in response to all comments and questions and to reflect the severe impacts of the demand of economic resources required to comply with the re-drafted TMDL. Rather, the Pennsylvania Department of Environmental Protection should be allowed to continue with the implementation of its Chesapeake Bay Tributary Strategy (CBTS).

Schedule Is Inadequate

There is not sufficient time in the schedule to consider public comment and then to revise the TMDL. EPA's schedule appears to be an effort to avoid significant consideration of public comment as much as to meet a court ordered deadline. The impact of the TMDL will be felt for decades and will cost billions of dollars. The schedule is not considerate of the weight of the issues presented in the EPA TMDL.

Due to the significant number of comments expected on EPA's controversial draft TMDL and the current schedule requiring the TMDL to be finalized by the end of the year, it would be impossible for EPA to seriously consider the comments submitted, thus making the public comment period a mere exercise to an EPA predetermined request (i.e., a sham). Additional time needs to be provided for EPA to be able to evaluate and respond to public comments. As EPA has done in numerous other instances, where a court-imposed deadline does not provide adequate time, additional time should be requested from the court. Only then can EPA seriously evaluate comments from the public.

Limit of Treatment Technology for POTW's is Incorrect

The TMDL states that limits of POTW treatment technology for total nitrogen and total phosphorus are, respectively, 3 mg/l and 0.1 mg/l.

1. Please cite the development document that arrives at this conclusion.
2. Please identify what treatment technology is required for achieving this performance, MBR's, denite filters, or what?
3. Please state what consideration has been given to the colder wastewater temperatures that prevail in Pennsylvania than in, say, mid-Maryland.
4. Please provide the analysis that relates the limit of treatment technology to the results that would be reported in a DMR given that the limit of detection of total phosphorus is 0.06 mg/l and that a non-detection result will be reported as 0.03 mg/l and not as 0.00 mg/l.
5. Please provide the analysis that relates annual cap loads, given colder wastewater temperature and higher flows in January through April and December of each

year, to the limit of technology limits of 3 mg/l for total nitrogen and 0.1 mg/l for total phosphorus.

6. Why is limit of technology applied without regard to delivery ratios?
7. If the requested information is not available, please tell us why consideration was not given to these matters.
8. Can special circumstances be argued that limit of technology does not apply to a particular POTW? For example, would a northern Pennsylvania POTW be able to argue that the limit would not apply there?

In the case of Milton Regional Sewer Authority, should cap loads be reduced from the current levels based on design capacity and 6 mg/l total nitrogen and 0.8 mg/l total phosphorus to limit of technology because other segments fail to meet their targets, it is likely that we would be facing increased capital expenses of over $6 million and increased operations and maintenance costs of $0.8 million per year. In addition, it is likely that additional lands would need to be purchased to site the required additional treatment units.

Uncertainty of TMDL Requirements Delays and Prevents Compliance and Adds Cost

POTW's typically deliver complex treatment plant upgrades that take about 5 to 6 years from start of planning to initiation of operation. The EPA construction grants program experience was even longer from start to finish.

Given that Pennsylvania developed its CBTS in 2004 through 2006 and that many POTW's have already received annual cap loads and compliance schedules in their NPDES permits with EPA's encouragement and approval and started construction and given that EPA has announced backstop cap loads based on effluent concentrations that are 50 percent of the CBTS limits for total nitrogen and 12.5 percent of total phosphorus:

1. What should a POTW in a planning phase plan for? Should it plan for the CBTS limits or the backstop limits or both?
2. The same question for a POTW under construction? Should it change order in extra treatment?
3. What about the Milton Regional Sewer Authority. Our project is almost ready to be bid. What should we build?
4. Even if EPA does not deploy backstop limits with the initial issuance of the TMDL, what assurances will EPA make that backstop limits will not be deployed at any of the two year reviews or at the end of the current NPDES permit term?
5. Will POTW's be able to succeed in arguing financial impossibility in cases where they have gone into substantial debt to achieve the CBTS limits and are subsequently subject to backstop limits?

the point source segment which is the best performing and closest to compliance segment.

Using the EPA reasoning, point sources should stop compliance, appeal their permits and refuse to implement nutrient reduction so that they receive the same reward as the agricultural and developed segments. This makes no sense.

1. What are the expected additional capital, annual, and present worth costs associated with implementation of the backstop limits of 3 mg/l total nitrogen and 0.1 mg/l total phosphorus?
2. What are the expected savings in capital, annual, and present worth costs associated with implementation the reallocation of additional total nitrogen and total phosphorus to the agricultural and developed segments?
3. What analysis has EPA made on the social and economic impacts of such re-allocation?

Environmental Justice Threatened

The draft TMDL ignores the cost impact of the backstop limits to be imposed on Pennsylvania POTW's. EPA has not considered the environmental justice of such re-allocation given that larger populations of minorities and low and moderate income families reside in the cities and boroughs that are served by public sewers than in the agricultural and developed segments.

In the case of Milton (as is typical in other municipalities), over 50 percent of the population is of low and moderate income. These will be the people paying the cost of the additional treatment capital and operation and maintenance costs for meeting the backstop limits because those in the agricultural community would not be taking steps to address their non-point source nutrient discharges. It is inappropriate to require low income minorities to pay a disproportionate share due to the inactions of other non-minority, more affluent sectors.

Has EPA considered the environmental justice of its proposed backstop limits and has it sought outreach to representatives of minority and low and moderate income residents regarding the disproportionate impact of such approach?

EPA Has Not Considered the Difference Between Reality vs. Promises in the State's WIP's

The WIP's prepared by New York, Pennsylvania, Delaware, and West Virginia may represent what those states are actually capable of doing and not promises that more can be achieved.

1. Has EPA considered that the WIP's from the various states may have been written from different points of view and that a WIP provides no assurance that the actions promised will be achieved?
2. If the states do not have sufficient regulatory authority to satisfy EPA, what regulatory authority can EPA assert to assure that the WIP's, as written, can be implemented?
3. If the states do not have sufficient resources, financial or other, what resources can EPA provide to assure that the WIP's as written can be implemented?

Lack of Model Data Limits Public Comment

Watershed model data has been unavailable for review or has been available only in extremely complex and large data sets that are unusable to the public. Beginning in mid-summer, numerous requests have been made to DEP to release the 5.3 delivery ratios. DEP has never provided that data saying that they could not obtain it from EPA. It has only been in the last 3 days that EPA has furnished the delivery ratios, first in a file that contained over 1.4 million lines of data, then in tables which included all PA NPDES permits, but not sorted for significant point sources and not identifying the phase 1, 2, and 3 POTW's or not providing the facility names. Delivery ratios are critical to evaluating compliance paths for POTW's.

1. Is the modeling so incomplete that moving forward with the TMDL is unwise?
2. What is the status of completion of the 5.3 model?
3. Will each new model run in the future necessitate changing the TMDL and all the policy, regulation, programs, etc. that result from the TMDL?
4. Do delivery ratios decline with reduced nutrient loadings? If that is the case, have reduced delivery ratios been forecast in the model to decline in future years? This question is based on the demonstrated tendency for lower concentrations of nutrients to be consumed nearer the point of discharge than the instance where large concentrations are discharged.
5. Do delivery ratios change with climate change and has this been forecast in the model?

1. What are the results of sampling the Susquehanna River at the Mason-Dixon Line? Please describe the scope and extent of the data.
2. Please confirm that DEP's assessment in the WIP is correct and that the simple reporting of more BMP implementation would reduce Pennsylvania's contribution to the Bay.

Respectfully submitted,

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